

July 19, 2001

CENTRAL MAINE POWER COMPANY
Application for Approval of Affiliated
Interest Transaction with MaineCom
Services

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order we approve, pursuant to 35-A M.R.S.A. § 707, the affiliated interest agreement (Agreement) between MaineCom Services (MaineCom) and CMP, filed on May 7, 2001 and amended on July 6, 2001. The Agreement provides for the lease by MaineCom of Fibers owned by CMP and installed on CMP facilities. As discussed below, we conclude that the Agreement is not adverse to the public interest.

II. PROCEDURAL HISTORY

On May 5, 2001, Central Maine Power Company (CMP) filed a redacted Petition for Approval of Affiliated Interest Transaction with MaineCom Services (MaineCom)¹ for the Use of Fibers Within a Fiber Optic Cable.² The Public Advocate and MaineCom intervened in this proceeding. The Commission held an initial case conference on July 2, 2001 in which CMP and MaineCom participated. The Examiner issued a Report of Conference on July 2, 2001. On July 6, 2001, CMP amended the Agreement as discussed during the technical conference. The Examiner held a telephone conference on July 12, 2001 in which CMP and the Public Advocate participated. The purpose of the telephone conference was to confirm CMP's intent regarding the ratemaking treatment of the lease revenues.

III. BACKGROUND

CMP has provided the following description of the transaction:

In April of 2000, CMP signed an agreement with a non-affiliate for installation of fiber optic facilities. Under this

¹ MaineCom is an affiliate of CMP.

² The Examiner previously issued Temporary Protective Order No. 1, which provides protection for the price terms under the Agreement. No party objected to the confidential treatment sought by CMP

agreement, CMP received dark fibers between Lewiston and Augusta. To tie existing fiber optic infrastructure south and west of Lewiston and Augusta through the new fiber optic facilities provided by the non affiliate, CMP installed approximately 4.75 miles of fiber optic cable between the Crowley substation and a utility pole outside of Verizon's central office in Lewiston. This allowed CMP to complete the final buildout of our own cable in January of 2001. CMP installed a 24-fiber cable because that is a standard size, which reduces manufacturing time and cost. It also allows CMP to recover part of the cost of the installation through the lease of surplus dark fiber. MaineCom requested use of some of the surplus fibers and negotiated terms with CMP as set forth in the Agreement. Since Maine Com is an affiliate of CMP, this Agreement requires Commission approval.

CMP Petition at 1. The Agreement provides for the lease by MaineCom of between 4 and 16 fibers depending on MaineCom's needs and fiber availability. Every five years, CMP may increase the lease fee by as much as 20% of the fee that had been in effect for the immediately preceding period. CMP will file the license fee (if Maine-Com accepts the new fee) for fifth year renewals at the Commission no later than four months prior to the renewal date. If the Commission requires a proceeding and orders a different license fee, either party may terminate the Agreement. Counsel for CMP has confirmed that revenues from the annual fees will be treated above the line.

IV. DISCUSSION

The Agreement establishes a fee for MaineCom's use of CMP's fibers installed in the electric space on CMP's poles. In Docket No. 99-882, we approved a similar agreement for MaineCom's use of fiber owned by CMP and attached in the electric space on CMP's poles. The lease fee applicable here is consistent with the range of rates set forth in CMP's consultant's report produced by CMP in Docket No. 99-882. In addition, CMP will account for the lease-fee revenues "above-the-line," which is consistent with Chapter 820 of the Commission's rules. The Agreement further provides that the grant to MaineCom is not exclusive in that it does not restrict CMP "from using, or permitting others to use, CMP's Structures, land, easements and/or rights-of -way for any purpose." Agreement § 2.2. Finally, the Agreement provides that CMP maintains the right to take any action necessary to maintain CMP's electric services to its customers. Agreement § 5.3.

For the above reasons, we conclude that the affiliated interest agreement at issue in this matter is not adverse to the public interest. 35-A M.R.S.A. § 707(3).

Accordingly, it is

ORDERED

That the Agreement, appended hereto as Attachment A, that was filed by CMP on May 5, 2001 and amended on July 6, 2001 is approved consistent with the body of this Order.

Dated at Augusta, Maine, this day of July, 2001.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.